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RUCNASE/ASEAN MEMBER COLLECTIVE
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UNCLAS SECTION 01 OF 03 HANOI 000032

SENSITIVE
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STATE FOR EAP/MLS AND EEB/TPP/IPE JURBAN
STATE FOR EEB/TPP/IPE FOR HALLOCK, WATTS, AND KEAT
STATE ALSO PASS USTR DBISBEE AND RBAE
4430/MAC/AP/OPB/VLC/HPPHO

E.O. 12958: N/A
TAGS: [ECON](#) [KIPR](#) [EAID](#) [ETRD](#) [VM](#)
SUBJECT: VIETNAM WORKS TO STRENGTHEN IPR ENFORCEMENT

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¶1. (U) Summary: Vietnam continues to make progress in strengthening efforts and capacity to protect intellectual property rights (IPR). Although IPR enforcement in Vietnam remains weak and piracy is extensive, the Government of Vietnam (GVN) continues to take significant steps to bolster its enforcement record, including taking an active role in addressing broadcast cable signal theft and internet piracy, and cracking down on the sale of pirated and counterfeit goods at the retail level. Vietnam is also continuing to take steps to upgrade its IPR legal framework, including revising the criminal code to update its IPR-related provisions, undertaking additional efforts to advance software copyright protection, and improving the responsiveness of Vietnam's primary IPR enforcement agency, Market Watch. End summary.

IMPROVING IPR LEGAL INSTRUMENTS & ENFORCEMENT

¶2. (U) Two years after joining the World Trade Organization, Vietnam is continuing its efforts to develop a modern IPR legal regime and meet its obligations under the Trade-Related Aspects of Intellectual Property Rights (TRIPs). Last week, Prime Minister Nguyen Tan Dung ordered his government to implement a detailed plan to control copyright protection in Vietnam. The PM instructed the Ministries of Culture, Finance, and Industry and Trade to increase copyright protection in Vietnam's business and service sectors, prevent the import and export of items that violate copyright laws, particularly optical discs, and introduce "strict punishment" for organizations and individuals that circulate pirated goods. Additionally, the decree orders all Vietnamese universities and professional schools to introduce lectures on intellectual property rights.

¶3. (U) Recently, Vietnamese authorities have conducted increasing numbers of raids against sellers of pirated and counterfeit goods, including fake pharmaceuticals, alcohol, cosmetics, gas, fertilizer, motorbikes, electronics and software. In one widely covered crackdown, authorities conducted raids on groups selling counterfeit fertilizer, which emerged recently as a significant problem for Vietnamese farmers. In another instance, police in central Nghe An Province confiscated more than 200 motorbikes with infringing trademarks, including those of Honda's Future Neo and Wave Alpha scooters. Last week, the Market Management Department (Market Watch), an IPR enforcement agency under the Ministry of Industry and Trade, seized 10 tons of smuggled counterfeit and pirated consumer goods worth an estimated \$40,000 from several trucks in northern Bac Giang Province. It also seized one hundred thousand pirated compact discs from a shop in Ho Chi Minh City. Authorities said the owner supplied the discs to a number of other local shops throughout the city. The National Office of Intellectual Property (NOIP) said total fines for IPR infringement in 2008 reached 255 million VND (\$14,500).

FIGHTING CABLE TV & INTERNET PIRACY

14. (U) The GVN has also taken strides to reduce cable-TV signal piracy, which used to be a significant problem in Vietnam. VTC, the state-owned digital terrestrial cable company, ceased broadcast of unlicensed content earlier in 2008 after engagement by rights holders and the USG. The Cable & Satellite Broadcasting Association of Asia (CASBAA) has commended Vietnam for its progress in strengthening IPR protection for broadcasters. Even so, pay TV signal theft remains a problem here, perpetrated mostly by small cable TV operators.

15. (U) The GVN is also beginning to tackle internet piracy. After complaints by the Embassy and the Office of the U.S. Trade Representative, the Copyright Office of Vietnam and the NOIP reportedly fined national internet service provider FPT and four other Vietnamese internet sites a total of 20 million VND (\$1,150) and ordered the companies to remove pirated content (mostly Time Warner movies) from their websites. Both the Copyright Office and NOIP have reiterated to the USTR their desire to have U.S. rights holders proactively avail themselves of the administrative processes in place in Vietnam.

TACKLING SOFTWARE PIRACY

16. (U) In August 2008, the Ministry of Culture, Sports and Tourism (MOCST), the Vietnam Software Association (VINASA) and the Business Software Alliance (BSA) joined forces to create the "Partnership in Protection of Software Copyrights." The new partnership aims to decrease software piracy via public awareness campaigns, inspections and stricter penalties for violations. To spread the message, the Partnership has been running public service announcements in several

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of Vietnam's largest print and online newspapers, warning against software piracy.

17. (U) Authorities backed up the public awareness campaign with a crackdown on violators: in late 2008, MOCST and MPS inspectors conducted multiple raids, discovering pirated software running on 1200 computers in six provinces. In one such raid in December, authorities raided a French-invested architecture firm, NKB-archi Vietnam, where they discovered unlicensed software, including Microsoft Office, Windows XP, and Symantec Antivirus running on dozens of computers.

IMPROVING DATA PROTECTION

18. (U) Vietnam also demonstrated a willingness to modify its IPR legal regime for data protection. Under previous rules, the Drug Administration of Vietnam (DAV) did not extend automatic test data protection to new drugs entering the Vietnamese market. Rather, pharmaceutical companies were required to request data protection upon registration of their drug and then await a lengthy review. After urging by the USTR and U.S. industry, the DAV agreed to modify their internal procedure. In December 2008, after approval by the Minister of Health, DAV announced it would extend automatic data protection to new drugs.

CREATING A MORE RESPONSIVE BUREAUCRACY

19. (U) On October 22, 2008, MOIT issued Circular No. 12, which specifies a shortened time for Market Watch to respond to rights holders' complaints and carry out raids on retailers selling counterfeit and pirated goods. In the past, rights holders often waited months for Market Watch to reply. The new law requires the agency to respond within 10 days and conduct raids within 60 days (90 days for "complex cases"). If the case involves serious "criminal elements," Market Watch must refer the case to the Ministry of Public Security (MPS) for further investigation.

¶10. (U) Enforcing IP law in Vietnam is complicated by a lack of understanding among retailers of their legal obligations and the economic impact upon the IP owners from the sale of pirated or counterfeit goods. This is not necessarily limited to small mom-and-pop establishments; Market Watch officials tell us that some of Vietnam's largest retailers routinely peddle infringing goods. To combat this problem, Post is engaging with Market Watch to develop two thousand copies of an IPR Outreach booklet. Authorities will distribute the booklet, likely in March, to retailers and consumers in areas with high rates of infringing goods. The booklet describes how to identify a fake or pirated good, explains the legal and economic consequences of peddling such wares, suggests locations where vendors can obtain legitimate goods for sale, and notes why IP protection is important to Vietnam and its citizens. EEB and Post money is funding this effort. Post also hopes to offer the GVN technical capacity training in FY09 to improve IPR enforcement.

COMMENT

¶11. (U) Despite the recent crackdown, IPR enforcement in Vietnam remains weak and violations rampant. DVD and CD piracy rates remain at or above 90 percent. Yet, Vietnam's continued efforts to integrate into the global economy and improve trade relations further with the United States have motivated the GVN to make fulfillment of its IPR commitments a priority. The U.S. Government enjoys a robust and productive dialogue on IP issues with the GVN. We have cultivated an open exchange of information and ideas with a wide range of IP-related government agencies, and continue to build on that relationship through our bilateral engagement and technical assistance programs.

¶12. (SBU) Comment continued: The GVN's strong desire to fulfill its international obligations and protect the rights of a growing and creative private sector, in combination with its desire to gain eligibility to the U.S. GSP preference program and remove itself from the U.S. Special 301 Watch List, have supported increased IP enforcement efforts in 2008. We expect those efforts to accelerate in 2009. The progress made in cooperation on advancing and protecting IP rights has also fostered closer bilateral relations with law enforcement agencies and contributed to helping Vietnam's legal system become a more predictable and reliable venue to seek recourse and address wrongs. We believe that continued robust

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engagement with the GVN on IPR matters will reap rewards not only for U.S. rights holders, but also advance our broader rule of law agenda.

¶13. (U) This message was coordinated with Ho Chi Minh City.

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